



THIRTEENTH ANNUAL IFTTA NORTH AMERICA CONFERENCE

MARCH 14 - 15, 2024

In March of 2024, the North American section of the International Forum of Travel & Tourism Advocates (<http://iftta.org/>) met once again in Fort Lauderdale, Florida. For the second consecutive post-COVID year, the event was held in the Shepard Broad College of Law at Nova Southeastern University (“NSU”).

Laurence Gore (a Fort Lauderdale lawyer and IFTTA Director) hosted the event.

Canadian presentations bracketed the day, with **Tim Law** leading off. In a presentation entitled “**Foreign Travel Service Suppliers Carrying on Business in Canada**”, he summarized the information that is often needed by non-Canadian companies (and their lawyers) who are looking to establish an operation in Ontario. This is the country’s largest province and one with a sizeable Compensation Fund that can be accessed by disaffected passengers PROVIDED they booked with an Ontario licensee. This offers a competitive advantage to travel companies with an Ontario licence. Getting that licence requires the foreign applicant to confront a number of hurdles, both administrative and legal. Tim is often consulted by such companies and lawyers, and he shared his accumulated wisdom with the attendees.

Host **Larry Gore** also drew on his practical experience when talking about “**Copyright Trolls And The Travel Industry**”. These are individuals and companies who search out photographs that have been used by (travel) companies and that may be the subject to claims of copyright infringement. He referred to the

Digital Millennium Copyright Act, with which the USA implemented in 1998 a pair of World Intellectual Property Organization treaties. The DMCA offers limited “safe harbour” protections for intermediaries who comply with some specified procedures, but not for (travel) companies that use without authorization (even if inadvertently) copyrighted pictures. Larry spoke of ways of combatting unsubstantiated claims of the sort received by his clients, drawing in part on <https://www.dmcaprogram.com/>.

Veteran travel lawyer **Rodney Gould** brought his New England practicality to the conference, with his presentation about “**The Necessity of Reading, Reviewing, Revising, and Negotiating Contracts**”. It was built on the foundational premise that contracts between supplier and agent/wholesaler are ubiquitous in an international industry such as travel, and that there is an obvious conflict between the interests of the suppliers (who usually draft those contracts) and the agents/wholesalers (who are then obliged to sign them). He also had a wealth of actual cases on which to draw, citing several extracts from actual contracts that contained wording that might come back to haunt the agent/wholesaler who signed them without carefully considering what was being signed.

In the 2023 conference, NSU Professor Barry Nierenberg spoke of Wellness Travel and the difference between those who promote such products with actual expertise in the field, and those who lack such knowledge. This year, his colleague, **Prof. Emily Georgia Salivar**, followed up with a data-filled presentation that focused specifically on “**Wellness Tourism in the Context of Romantic Relationships**”, and those who offer travel-based products to that market. While acknowledging that she wasn’t speaking from the perspective of someone with legal training, she was nevertheless able to engage her audience with an oral and visual offering that drew on her extensive research, and her experience in dealing with underserved populations.

Connecticut counsel **Jeff Ment** was meant to speak next, drawing on his recent experience dealing with a US-based regulator. The title of his session --- “**When Government Sets Its Sights On You**” --- contained some obvious foreshadowing of an interesting presentation. All attendees were thus disappointed to learn that the jury in a trial in which he was involved was still deliberating, precluding his attendance in Florida.

Washington lawyer **Chun Wright** continued her exploration of the ways in which technological advances such as Artificial Intelligence are impacting the travel industry. This year, she drew the distinction between traditional AI (which involves making future numeric predictions, based on a computer's analysis of historical input) and generative AI (which involves the creation of new outputs of text and of pictures that can often be indistinguishable from that which humans generate). The latter made great strides in 2023, what with ChatGPT, etc. In **"Generative AI: Travel Industry Use Cases and Top Court cases"**, Chunnie touched on some decided cases from the travel industry and flagged the important non-travel cases that are working their way through the US Courts.

Her topic merged naturally with the one that followed; it was entitled **"Chatbots on Pot: Hallucinations Cause Headache"**. Although recently retired from Florida International University, **Prof. John Thomas** continued his practice of making interesting presentations to this IFTTA NA event. This year's dealt with the truthfulness of AI products, and how humans can train AI to be truthful --- nor not. That led him into a discussion of some recent cases in which AI generated information that was incorrect, and on whose shoulders liability for such failings ought to fall. Of specific relevance to the travel industry is a British Columbia case in which Air Canada seemed to suggest that the chatbot on its website was separate from, and not the responsibility of, the carrier itself.

For some time, veteran travel-specialist lawyer and columnist **Mark Pestronk** has been tracking the evolution of the travel industry, and its increasing verticalization. Building on his 2023 session on this topic, Mark spoke to the ways in which this trend has continued in the subsequent year, and the reasons for it. Once that footing was established in **"Further Reflections on the Evolving Structure of the Retail Travel Industry"**, he explored a variety of the legal issues that accompany, and grow out of, this trend towards hyper-verticalization. In the final section of his talk, Mark made some predictions as to where all of this is headed. For both the industry and the lawyers who specialize in this field, his conclusions were not optimistic.

After working for several years as a lawyer for ASTA, Virginia-based **Daniel Zim** developed a private practice that focuses on the travel industry. In the course of that practice, he has developed a clear understanding of **"Travel Advisors and the**

Duty of Care". Judicial decisions have made it clear that such advisors are fiduciaries who owe an elevated duty of care to those who they advise. Daniel illustrated his talk with a focus on the advisor's duty (a) to make and confirm reservations, (b) to provide critical travel information, (c) to investigate, and (d) to warn of dangerous conditions. He concluded his comments by distinguishing between travel advisors (who owe that fiduciary duty to consumers) and OTAs (that do not).

Toronto lawyer **Doug Crozier** returned the focus to Canada in **"Doing Your Homework on Working from Home"**. Citing a micro-example of the verticalization of the travel industry, he spoke of the evolution the industry's view of working from home. Once frowned upon by most of the North American industry, it was in fact illegal in Ontario fifty years ago, when that province's *Travel Industry Act* was first passed. Now, it is legal provided three conditions are met. He addressed the views of the Quebec and British Columbia travel regulators toward travel professionals who work from home, then concluded with references to (a) a recent decision regarding the rights of customers of a home-based business to use a "Visitors" parking lot in a condo, and (b) the disappearance of relaxed COVID-era rules for Income Tax deductions available to those who work from home.

During the day, those in attendance were:

- updated on events involving the international organization, whose most recent Conference was held in Montevideo in November of 2023, with specifics of the 2024 event still being finalized; and
- advised that the 14th annual North American event is expected to take place in March of 2025, once again in Fort Lauderdale.

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